

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

IN RE: AQUEOUS FILM-FORMING FOAMS PRODUCTS LIABILITY LITIGATION	MDL No. 2:18-mn-2873-RMG CASE MANAGEMENT ORDER NO. 13.A This Document Relates to All Actions
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**RULE 12(B)(1) AND 12(B)(2) MOTIONS FOR
WATER PROVIDER BELLWETHER DISCOVERY POOL CASES**

Pursuant to Paragraph G of Case Management Order (“CMO”) 13, motions to dismiss under Rules 12(b)(1) or 12(b)(2) of the Federal Rule of Civil Procedure for any of the Water Provider Bellwether Discovery Pool Case were to be filed within 21 days of the case being selected. (Dkt. No. 1049.)

On February 26, 2021, pursuant to the Joint Submission Regarding Water Provider Bellwether Discovery Pool Cases (“Joint Submission”), the parties selected 10 Water Provider Bellwether Discovery Pool Cases. (Dkt. No. 1222.) In that Joint Submission, the parties set forth an agreement as to the preservation of defenses under Rules 12(b)(1) and 12(b)(2) and the deferral of motions relating to those defenses. The parties asked that the Court memorialize the parties’ agreement to preserve those defenses in a separate CMO.

Accordingly:

1. “Agreeing Parties” shall mean (i) the PEC; (ii) each of the plaintiffs named in the 10 Water Provider Bellwether Discovery Pool Cases selected in the Joint Submission and (iii) the following defendants (collectively, the “Agreeing Defendants”):

3M Company
AGC Chemicals Americas, Inc.
Amerex Corp.
Arkema Inc.
BASF Corporation
Buckeye Fire Equipment Co.
Carrier Global Corporation
ChemDesign Products, Inc.
Chemguard, Inc.
The Chemours Co.
The Chemours Co., FC, LLC
Chubb Fire, Ltd.

Deepwater Chemicals, Inc.
E. I. duPont De Nemours & Co.
Kidde PLC, Inc.
Kidde-Fenwal, Inc.
Nation Ford Chemical Co.
National Foam, Inc.
Raytheon Technologies Corp.
Tyco Fire Products, LP
United Technologies Corp.
UTC Fire & Security Americas Corp., Inc.

2. The Agreeing Defendants need not (and have represented that they will not) file—within the timeframe set forth in Paragraph G of CMO 13—motions to dismiss pursuant to Rules 12(b)(1) and/or 12(b)(2) in any of the Water Provider Bellwether Discovery Pool Cases listed in the Joint Submission and in which they are named as defendants.
3. Any defenses under Rules 12(b)(1) and/or 12(b)(2) that the Agreeing Defendants may have in any of the Water Provider Bellwether Discovery Pool Cases are expressly preserved and not waived, and the Agreeing Defendants may bring such motions at a later date. To the extent such motions are sought, Co-Lead Counsel for Plaintiffs and Co-Lead Counsel for Defendants will mutually agree on a date for the filing of such motions, and the date will be presented to the Court at that time.
4. Plaintiffs in any of the Water Provider Bellwether Discovery Pool Cases may meet and confer with the Agreeing Defendants regarding jurisdictional discovery during Tier One Core Discovery and/or following the filing, if any, of such a motion by one of the Agreeing Defendants prior to or during Tier Two proceedings.
5. If any of the Water Provider Bellwether Discovery Pool Cases is dismissed for lack of jurisdiction, the plaintiff(s) in that case may re-file the Complaint in a court of competent jurisdiction and the date of the filing of the original Complaint or the date a particular Agreeing Defendant was added to the Complaint, as applicable, will apply for purposes of timeliness before that court.

AND IT IS SO ORDERED.

s/ Richard Mark Gergel
Richard Mark Gergel
United States District Judge

March 30, 2021
Charleston, South Carolina